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10/584,328	06/26/2006	Eric Vetillard	VETILLARD1	9651

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EXAMINER
POLLOCK, GREGORY A

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 May 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-8* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This action is responsive to claims filed 05/18/2009 and Applicant's request for

reconsideration of application 10/584328 filed 05/18/2009.

The amendment contains previously presented claims 2-6 and 8.

The amendment contains amended claims 7

Claims 1 have been canceled.

As such, claims 2-8 have been examined with this office action.

Claim Interpretation – "Whereby" (or "Wherein") Clauses

2.   **Claims 3 and 8** use of the phrase "wherein" or "whereby". A "wherein" clause

that merely states the result of the limitations in the claim adds nothing to the

patentability or substance of the claim [MPEP § 2111.04].

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(b) the invention was patented or described in a
printed publication in this or a foreign country or in public use or on sale in this country, more than
one year prior to the date of application for patent in the United States.

4.   Claims 2-4, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by

Cirne (U.S. Patent No. 6260187).

As per claim 7, Cirne teaches a method **for loading into a computer device**
(JAVA running on a platform [Abstract] [column 1, lines 53-57]. Here the
examiner notes that the "computing device" can be broadly interpreted as any
computing device.) **an updated release of an earlier application** (add new
functionality to existing code [column 2, lines 45-47]) **having earlier application**

classes and earlier static field identifiers (original class and static field [column 2, lines 50-65]), **said method comprising the steps of:**
computing, in a first computing operation prior to said loading (three sets of inputs are received at a code modifier [Figure 1, element 10], the inputs including replacement or substitution classes and rules [column 2, lines 50-65]), **a class matching information establishing a correspondence between said earlier application release classes and said updated application release classes** ([column 3, line 65 – column 4, line 9] [Figure 6] and [column 10, lines 40-63]);
computing, in a second computing operation prior to said loading (three sets of inputs are received at a code modifier [Figure 1, element 10], the input including replacement or substitution static fields and rules [column 2, lines 50-65]), **a second static field identifiers matching information establishing a correspondence between said earlier application release static field identifiers and said updated application release static field identifiers** ([column 4, lines 36-44] [Figure 8] and [column 13, lines 11-46]);
linking said class matching information and said static field identifiers matching information to said updated application release as loaded into the computer device ([Figures 6 and 8] and [column 10, line 64 – column 12, line 12] and [column 13, lines 11-46]);
and using said class matching information and said static field identifiers matching information to modify the objects to point at the updated application release classes and use the updated application release static field identifiers ([column 2, lines 50-67] [column 5, lines 60-63] [column 6, lines 5-9] ([Figures 6 and 8] and [column 10, line 64 – column 14, line 19]).

As per claim 2, the rejection of claim 7 has been addressed.
Cirne teaches a method **wherein said class matching information and static field identifiers matching information are lookup tables** (three sets of inputs are received at a code modifier [Figure 1, element 10], the inputs including replacement or substitution classes, static fields, and rules [column 2, lines 50-65], the inputs further containing a constant pool [Figure 5] which contains class data structures [column 5, line 59 – column 6, line 12] and static field identifiers [column 6, lines 46-58] used in [Figure 4 and 6] for class, static filed and object updates.).

As per claim 3, the rejection of claim 7 has been addressed.
Cirne teaches a method **wherein said class matching information and static field identifiers matching information is omitted when said objects are not to be modified** ([Figure 4] [column 5, lines 29-58] [column 10, lines 40-63] and [column 13, lines 11-45]. Here the examiner notes that even though prior art has been applied to the claim limit, the claim limit merely states the results of the limitations in the claims and adds nothing to the patentability or substance of the claim. As such, this claim limit is given no patentable weight.).

As per claim 4, the rejection of claim 7 has been addressed.
Cirne teaches a method **comprising an implementation of procedures for updating application data after the new application release has been installed** (add new functionality to existing code [column 2, lines 45-47]).

As per claim 8, the rejection of claim 7 has been addressed.
Cirne teaches a method **wherein said class matching information and said static field identifiers matching information are omitted when no additional class is added to said new application release or when newly introduced additional classes do not change said class hierarchy** ([Figure 4] [column 5, lines 29-58] [column 10, lines 40-63] and [column 13, lines 11-45]. Here the examiner notes that even though prior art has been applied to the claim limit, the claim limit merely states the results of the limitations in the claims and adds nothing to the patentability or substance of the claim. As such, this claim limit is given no patentable weight.).

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Cirne (U.S. Patent No. 6260187) in view of official notice.

As per claims 5 and 6, the rejection of claim 7 has been addressed.
Cirne implies, but does not explicitly teach a method **wherein said computer device is a chip card and the programming language is a "Java Card" language.**

It is old and well known in the art that a JAVA card running a JAVA card language is an example of a JAVA platform (system) (for example Baentsch et al. teaches a JAVA card [column 1, lines 7-9] and [claim 6]) running JAVA card code [column 1, lines 7-9]).

It would have been obvious to one skilled in the art at the time of the invention to have used the Cirne on a JAVA card to achieve the claimed invention. Cirne

teaches that their invention can be run on different system which run JAVA code [column 1, line 53 – column 2, line 29] [Figure 9] [column 18, lines 45-51]). It would have been obvious to one skilled in the art at the time of the invention to have used Cirne on a JAVA card to modify JAVA to add new functionality to existing code.

As per MPEP § 2144.03(C), with respect to an Examiner's use of Official Notice:
To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111 (b).

The same section continues:
If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

Applicant has not challenged or traversed the examiner's use of official notice in the previous office action, and repeated herein. As such, the examiner now considers as admitted prior art, that "a JAVA card running a JAVA card language is an example of a JAVA platform (system)" is considered to be common knowledge or well-known in the art at the time of the applicant's invention.

Response to Arguments

7.   Applicant's arguments with regards to claims 2-8, filed 05/18/2009 have been

fully considered but they are not persuasive.

8.   <u>APPLICANT REMARKS CONCERNING Claim Rejections - 35 USC § 102 (page</u>

<u>4-7)</u>: The applicant contends that Cirne (U.S. Patent No. 6260187) does not

disclose step 4 of the claim 7, "using said class matching information and said

static field identifiers matching information to modify said objects to point at the

updated application release classes and use the updated application release

static field identifiers".

9.   <u>EXAMINER'S RESPONSE:</u> The Examiner respectfully disagrees with Applicant's

arguments. <u>First</u>, the examiner notes that as claimed 2-4, 7, and 8 are all

directed toward "a computer device" and not just a chip (JAVA) card. Therefore,

given the broadest reasonable interpretation, "a computer device" can be any

computer device, such a desk top computer.

<u>Second</u>, on page 4 of the applicant's response, the applicant remarks that "Claim

7 has been modified to clarify the fact that the application was previously loaded

in the computer device, not only in the sense that its code was present in some

storage medium or memory of the device, but in the stronger sense that the

application had previously been executed on the computer device and that data

(in the form of objects) of the earlier application release is present in some

storage medium or memory of the computer device.". The examiner notes that

the amended claims filed 05/18/2009 actually broaden the interpretation of the

claims by <u>removing</u> claim limits. This does not clarify the claims, but actually

reduces that which must be disclosed by the prior art of record.

<u>Third</u>, regarding applicant's argument that Cirne (U.S. Patent No. 6260187) does

not disclose step 4 of the claim 7, "using said class matching information and

said static field identifiers matching information to modify said objects to point at

the updated application release classes and use the updated application release

static field identifiers", the examiner disagrees. Within the disclosure of Cirne

(U.S. Patent No. 6260187), the term code (or object code) is used to refer to all

of the instructions, <u>variables</u>, <u>definitions</u>, <u>pointers</u>, <u>addresses</u> etc, that are stored

in a class file and/or a class data structure [column 5, lines 60-63]. The constant

pool is a table of variable length structures representing various string constants,

class names, field names, integers, floating point numbers and other constants

that are referred to within the class file structure and its substructures [column 6,

lines 5-9]. A description of using said class matching information and said static

field identifiers matching information to modify said objects to point at the

updated application release classes and use the updated application release

static field identifiers is detailed in Cirne ([Figures 6 and 8] and [column 10, line

64 – column 14, line 19]). As such, the examiner contends that the claim limits

are met by the prior art of record.

10.   APPLICANT REMARKS CONCERNING Claim Rejections - 35 USC § 102 (page

        7): The applicant contends that "Cirne does not teach nor suggest a method for

        loading an updated version of an original one, while this original application

        runs."

11.   EXAMINER'S RESPONSE: The Examiner respectfully submits that this

        argument is moot since the limit "a method for loading an updated version of an

        original one, while this original application runs"has not been claimed.

12.   APPLICANT REMARKS CONCERNING Claim Rejections - 35 USC § 102 (page

        8): The applicant contends that "Cirne does not teach nor suggest a method for

loading an updated version of an original one, without uploading and/or

downloading confidential data already stored on the chip card."

13.   EXAMINER'S RESPONSE: The Examiner respectfully submits that this

argument is moot since the limit "a method for loading an updated version of an

original one, without uploading and/or downloading confidential data already

stored on the chip card "has not been claimed.

14.   Therefore, in view of the above reasons, Examiner maintains rejections.

Conclusion

15.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §

706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed

within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Gregory Pollock whose telephone number is 571

270-1465. The examiner can normally be reached on 7:30 AM - 4 PM, Mon-Fri

Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Chuck Kyle can be reached on 571 272-5233. The fax phone

number for the organization where this application or proceeding is assigned is

571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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free). If you would like assistance from a USPTO Customer Service

Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

GAP

07/11/2009

/Gregory Pollock/
Examiner, Art Unit 3695

Gregory A. Pollock

/Lewis A. Bullock, Jr./
Supervisory Patent Examiner, Art Unit 2193